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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,830	08/18/2000	Clyde C. Lunsford	11920-1300	6429

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EXAMINER	
SINGH, ARTI R	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/641,830	LUNSFORD ET AL.	
	Examiner	Art Unit	
	Ms. Arti Singh	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) *10-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 27-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed on 04/09/04. Applicant's amendments to claims 1 and 30 have been entered. All previously made rejections are now withdrawn and have been modified with the following new rejections which have been applied to the current claims, i.e. 1-9 and 27-35. As all previously made rejections have been withdrawn and new ones applied Applicant's arguments with respect to claims 1-9 and 27-35 have been considered but are moot in view of the new grounds of rejection.

Specification

2. The disclosure is objected to because of the following informalities: At the beginning of the Specification (page 1) under the heading "Cross Reference To Related Applications", the continuity data needs to be updated as Application 09/062805 has matured into USP 6132476. Additionally, the same issue is seen in the specification at page 8, line 13. Appropriate correction is required.

Claim Objections

3. Claims 8 and 9 are objected to because of the following informalities: the limitation of "dye assistant" lacks antecedent basis. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re*

Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-9 and 27-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6132476. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another. It should be noted that the Examiner is aware that this Patent is the parent Application, however the case is currently unavailable to the Examiner so as determine whether or not the current claims were restricted out from the parent. If this is the case this rejection will be withdrawn in the next office action. It is requested that Applicant also inform the office if the current claims were in fact restricted from the parent.

6. Claims 1-9 and 27-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3,4,5,8,9,10,12-14,17,18,20-22,25,26,28,29,30,32,33,35-37 and 38-41 of U.S. Patent No. 6626964. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another.

7. Claims 1-9 and 27-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 9-11,13,14,19,20,22-24,27,44-46,48-50,54-57,59-61 of copending Application No. 2004/0045103 A1. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-9 and 27-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of copending Application No. 2003/0167580 A1. Although the conflicting claims are not identical, they are not patentably distinct from each other because they appear to be obvious variants of one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1, 5, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by JP-50-90778 issued to Mitsubishi Rayon KK.

11. JP 50-90778 teaches a flame retardant knitted weave comprising a blend of 10 to 70 wt% aromatic polyamide fibers and 90 to 30 wt% non-thermoplastic fibers, which are then

colored (dyed) to a specific hue (see page 3- #2-#3). Examples of the non-thermoplastic fibers can include cellulosic fiber, which have been rendered flame retardant.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 1-7 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 50-90778 as applied to the claims above, and further in view of USPN 4705523 issued to Hussamy and USPN 4902300 and USPN 4898596 issued to Riggins et al.

14. JP 50-90778 teaches what is set forth above but is not specific to the teaching of the flame resistant fiber to be a para-aramid and that the selected cellulosic fiber is rayon. To this the Examiner takes Official notice that para-aramids are well known aromatic polyamides that are commonly used as the chosen aramid in the industry of flame resistant textiles, and thus a person having ordinary skill in the art at the time the invention was made would have found it obvious to have used what is well known in the textile of JP 50-90778, motivated by the reasoned expectation that it is readily available.

With regard to the limitation of the cellulosic fiber to be specifically rayon, the Examiner once again takes Official Notice that using what is well known in the industry is well within the level of one of ordinary skill in the art, and thus a skilled artisan would have found it obvious to employed rayon as the cellulosic fiber in the invention of JP 50-90778. One would have been motivated to do so because it is readily available and thus easily attainable.

As stated JP 50-90778 teaches what is set forth along with the desire to dye their textile (top of page 11). They fail to the teach using the same dye assistants that Applicant desires. Riggins on the other hand does use the same dye assistant (N-cyclohexyl-2-pyrrolidone (column 3, lines 50-51). A person having ordinary skill in the art at the time the invention was made would have found it obvious to employ the dye assistant used by Riggins in the textile of Jp 50-90778. One would have been motivated to utilize this specific composition as it is a known blend that is used on flame retardant fabric that are dyes and thus using the same is economically viable.

With regard to the claims that require printing to be done in a camouflage pattern, Hussamy describes aramid fabrics, which are printed in such a pattern (column 1, lines 15-20). A person having ordinary skill in the art at the time the invention was made would have found it obvious to print the pattern of camouflage on the textile of JP-50-90778, motivated by the reasoned expectation that it is an obvious design choice, as is any pattern that is printed. However, one would chose this particular pattern if one were making military uniforms.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ms. Arti Singh
Primary Examiner
Art Unit 1771

Ars 06/25/04